

107TH CONGRESS
1ST SESSION

H. R. 2724

To amend title 17, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. CANNON (for himself and Mr. BOUCHER) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, and for other
purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Music Online Competi-
5 tion Act of 2001”.

6 **SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES IN ON-**
7 **LINE AND PHYSICAL RETAIL ESTABLISH-**
8 **MENTS.**

9 (a) EXEMPTION.—Section 110(7) of title 17, United
10 States Code, is amended—

11 (1) by striking “(7)” and inserting “(7)(A)”;

1 (2) by striking “by a vending establishment”
2 and inserting “or of a sound recording by digital
3 audio transmission, by or in a physical vending es-
4 tablishment”; and

5 (3) by adding after the semicolon at the end the
6 following: “or

7 “(B) performance of a sample of a nondra-
8 matic musical work or a sample of a sound re-
9 cording by digital audio transmission, by or
10 through a digital online service open to the pub-
11 lic at large without any direct or indirect admis-
12 sion charge, if—

13 “(i) the purpose of the performance is
14 to promote the retail sale, distribution or
15 license, by or through the service, of copies
16 or phonorecords of the work, including by
17 digital phonorecord delivery as defined in
18 section 115(d)(1);

19 “(ii) the transmitting entity transmits
20 the sample solely to the particular recipient
21 requesting the transmission; and,

22 “(iii) the length of the sample does
23 not exceed 30 seconds or, in the case of a
24 sound recording of more than 5 minutes in

1 duration, 10 percent of that sound record-
2 ing not to exceed 60 seconds;”.

3 (b) DEFINITION OF PERFORMANCE.—Section 110 of
4 title 17, United States Code, is amended by adding at the
5 end the following: “For purposes of paragraph (7), a ‘per-
6 formance’ includes a transmission made by a transmitting
7 organization to or on behalf of a vending establishment
8 or a digital online service.”.

9 **SEC. 3. EXEMPTION FOR EPHEMERAL RECORDINGS AND**
10 **FOR MULTIPLE EPHEMERAL RECORDINGS.**

11 (a) EXEMPTION.—Section 112(a)(1) of title 17,
12 United States Code, is amended—

13 (1) in subparagraph (A), by striking “made it,
14 and” and inserting “made it and, except to facilitate
15 transmission of the performance,”; and

16 (2) in subparagraph (C), by striking “public.”
17 and inserting the following: “public, except that a
18 transmission program as set forth in section
19 114(d)(2)(B) or section 114(d)(2)(C)(iii) is not re-
20 quired to be destroyed by a transmitting organiza-
21 tion entitled to a statutory license under section
22 114(f).”.

23 (b) MULTIPLE EPHEMERAL RECORDINGS EXEMP-
24 TION.—Section 112 of title 17, United States Code, is
25 amended—

1 (1) by striking subparagraph (C) of subsection
2 (e)(1) and redesignating subparagraph (D) as sub-
3 paragraph (C);

4 (2) by redesignating subsection (f) as sub-
5 section (g);

6 (3) by adding after subsection (e) the following:

7 “(f) Notwithstanding the provisions of section 106,
8 and except in the case of a motion picture or other audio-
9 visual work, it is not an infringement of copyright for a
10 transmitting organization entitled to transmit to the pub-
11 lic a performance or display of a work, under a license,
12 including a statutory license under section 114(f), or
13 transfer of the copyright or under the limitations on exclu-
14 sive rights in sound recordings specified by section 114(a)
15 or for a transmitting organization that is a broadcast
16 radio or television station licensed as such by the Federal
17 Communications Commission and that makes a broadcast
18 transmission of a performance of a sound recording in a
19 digital format on a nonsubscription basis, to make one or
20 more copies or phonorecords of a work included in a sound
21 recording, if—

22 “(1) each copy or phonorecord is retained and
23 used solely by the transmitting organization that
24 made it; and

1 “(2) each copy or phonorecord is used solely for
2 the transmitting organization’s own transmissions
3 within its local service area, or for purposes of archi-
4 val preservation or security.”

5 **SEC. 4. LICENSING FOR TRANSMISSION.**

6 (a) STATUTORY PERFORMANCE LICENSE PAY-
7 MENTS.—Subsection (g) of section 114 of title 17, United
8 States Code, is amended—

9 (1) by striking paragraph (2), and

10 (2) by adding after paragraph (1) the following:

11 “(2) Receipts from the statutory licensing of
12 public performances of sound recordings by digital
13 audio transmission in accordance with subsection (f)
14 shall be allocated and paid in the following manner:

15 “(A) 45 percent of the receipts shall be
16 paid, on a per sound recording basis, to the re-
17 cording artist or artists featured on such sound
18 recording or to a designated collection and dis-
19 tribution organization on behalf of such fea-
20 tured recording artist or artists.

21 “(B) 2.5 percent of the receipts shall be
22 deposited in an escrow account managed by an
23 independent administrator jointly appointed by
24 copyright owners of sound recordings and the
25 American Federation of Musicians (or any suc-

cessor entity) to be distributed to nonfeatured musicians (whether or not such musicians are members of the American Federation of Musicians) who have performed on sound recordings.

“(C) 2.5 percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not such vocalists are members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

“(D) 50 percent of the receipts shall be paid to a designated collection and distribution organization on behalf of the copyright owner of the exclusive right under section 106(6) of this title to perform publicly the sound recording by means of digital audio transmission under the statutory license of subsection (f) of this section.”.

(b) LICENSING AFFILIATES.—

(1) IN GENERAL.—Subsection (h) of section 114, title 17, United States Code, is amended—

1 (A) by striking paragraphs (1) and (2) and
2 inserting the following:

3 “(1) If the copyright owner of a sound record-
4 ing licenses an affiliated entity the right to repro-
5 duce the copyrighted work, to distribute the copy-
6 righted work to the public by means of a digital pho-
7 norecord delivery or to perform the copyrighted work
8 publicly, the copyright owner shall make the licensed
9 sound recording available on no less favorable terms
10 and conditions to all bona fide entities that offer
11 similar services, except that, if there are material
12 differences in the scope of the requested license with
13 respect to the type of service, the particular sound
14 recordings licensed, the frequency of use, the num-
15 ber of subscribers served, or the duration, then the
16 copyright owner may establish different terms and
17 conditions for such other services, that such dif-
18 ferent terms and conditions—

19 “(A) shall be limited to, and shall accu-
20 rately reflect any such material differences in
21 the scope of the requested license; and

22 “(B) permitted under this paragraph, shall
23 be made available to all bona fide entities that
24 offer similar services.

1 “(2)(A) Except as provided in subparagraph
2 (B), a copyright owner that licenses a sound record-
3 ing pursuant to paragraph (1) shall not mandate as
4 part of the terms and conditions of the license that
5 the licensee use any particular digital rights man-
6 agement technology.

7 “(B) A copyright owner described in subpara-
8 graph (A) shall not be prevented from including in
9 the license a requirement that the licensee imple-
10 ment digital rights management technology that
11 meets reasonable and nondiscriminatory perform-
12 ance criteria the copyright owner has established to
13 protect a right of a copyright owner under this title
14 in a work or a portion thereof.

15 “(3)(A) Except as provided in subparagraph
16 (B), a copyright owner that licenses a sound record-
17 ing pursuant to paragraph (1) shall not mandate as
18 part of the terms and conditions of the license that
19 the licensee use any particular digital music player.

20 “(B) A copyright owner described in subpara-
21 graph (A) shall not be prevented from including in
22 the license a requirement that the licensee use a dig-
23 ital music player that meets reasonable and non-
24 discriminatory performance criteria the copyright
25 owner has established.

1 “(4) ENFORCEMENT.—(A) The Attorney Gen-
2 eral may investigate an alleged violation of this sub-
3 section if an investigation begins not later than 2
4 years after an alleged violation occurred.

5 “(B) If the date of an alleged violation is unknown,
6 the Attorney General may investigate to determine the
7 date of the alleged violation.

8 “(C) If the Attorney General determines that a viola-
9 tion of this subsection has occurred, the Attorney General
10 has the power to seek to enforce the requirements of this
11 subsection through all appropriate means.

12 “(D) Nothing contained in this paragraph shall be
13 construed to limit the authority of the Attorney General
14 under any other provision of law.

15 (2) DEFINITIONS.—Subsection (j) of section
16 114 of title 17, United States Code, is amended—

17 (A) by amending paragraph (1) to read as
18 follows:

19 “(1) The term ‘affiliated entity’ means an enti-
20 ty, other than an entity that wholly owns or is whol-
21 ly owned by the licensor, engaging in digital audio
22 transmissions covered by section 106(6) or digital
23 phonorecord deliveries in which the licensor has any
24 direct or indirect partnership or any ownership in-

1 terest amounting to 5 percent or more of the out-
2 standing voting or nonvoting stock.”;

3 (B) by redesignating paragraphs (6)
4 through (15) as paragraphs (9) through (18),
5 respectively;

6 (C) by inserting after paragraph (5) the
7 following:

8 “(6) The term ‘digital music player’ means a
9 technology that renders audible the sounds in a
10 sound recording embodied in a digital audio trans-
11 mission or a digital phonorecord delivery.

12 “(7) The term ‘digital phonorecord delivery’
13 shall have the meaning given such term in section
14 115(d)(1).

15 “(8) The term ‘digital rights management tech-
16 nology’ means a technological measure used to limit
17 the uses of copyrighted work to those authorized by
18 the copyright owner or the law.”.

19 **SEC. 5. ELECTRONIC ADMINISTRATION OF THE COMPUL-**
20 **SORY LICENSE FOR MAKING AND DISTRIB-**
21 **UTING SOUND RECORDINGS.**

22 (a) NOTICE OF INTENTION.—Section 115(b) of title
23 17, United States Code, is amended—

24 (1) by striking paragraph (1) and inserting the
25 following:

1 “(1) NOTICE.—(A) Any person who wishes to
2 obtain a compulsory license under this section shall
3 do so by serving a notice of intention to make and
4 distribute phonorecords of the work.

5 “(B) Such notice may be given by direct notice
6 served upon the copyright owner or by constructive
7 notice that does not identify the copyright owner
8 and that is to be served upon the Copyright Office.

9 “(C) Notice shall be served before or within 30
10 days after making, and before distributing, any
11 phonorecords of the work, except that a notice of in-
12 tention to make digital phonorecord deliveries shall
13 be made within 30 days after enactment of this Act
14 or before the making of a digital phonorecord deliv-
15 ery of the work, whichever is later.

16 “(D) Any notice of intention may identify more
17 than one work and a constructive notice also may
18 identify a work by one or more copyright owners.

19 “(E) The notice shall comply, in form, content,
20 and manner of service, with requirements that the
21 Register of Copyrights shall prescribe by regula-
22 tion.”;

23 (2) by redesignating paragraph (2) as para-
24 graph (3); and,

1 (3) by inserting after paragraph (1) the fol-
2 lowing:

3 “(2) ROYALTY FEES.—Any person who obtains
4 a compulsory license under this section shall—

5 “(A) pay royalty fees in accordance with
6 subsection (c); or

7 “(B) if such royalty fees have not been de-
8 termined, agree to pay such royalty fees as
9 shall be determined in accordance with sub-
10 section (c).”;

11 (4) in paragraph (3), as redesignated, by insert-
12 ing “or (2)” after “(1)”.

13 (b) LIMITED DIGITAL PHONORECORD DELIVERY.—
14 Section 115(c) of title 17, United States Code, is
15 amended—

16 (1) in paragraph (3)—

17 (A) in subparagraph (C) by striking “and
18 (ii)” and inserting “(ii) limited digital phono-
19 record deliveries, and (iii)”;

20 (B) in subparagraph (D)—

21 (i) by striking “and (ii)” and inserting
22 “(ii) limited digital phonorecord deliveries,
23 and (iii)”;

24 (ii) by inserting after “as provided in
25 subparagraphs (B) and (C).” the following:

1 “In setting royalty rates and terms for lim-
2 ited digital phonorecord deliveries under
3 this section, the copyright arbitration roy-
4 alty panel also shall consider the limita-
5 tions imposed upon the use of the limited
6 digital phonorecord delivery by a trans-
7 mission recipient in proportion to digital
8 phonorecord deliveries in general, the ex-
9 tent to which limited digital phonorecord
10 deliveries may promote or may substitute
11 for the sales of phonorecords or otherwise
12 may enhance or may interfere with the
13 copyright owner’s other streams of revenue
14 from its nondramatic musical works, and
15 the proportion of the revenue received by
16 the compulsory licensee from every such
17 act of distribution of the phonorecord
18 under this clause equal to the proportion
19 of the revenue received by the compulsory
20 licensee from distribution of a general dig-
21 ital phonorecord delivery that is payable by
22 a compulsory licensee under clause (2) and
23 under chapter 8.”;

24 (4) by inserting in paragraph (5) after “next
25 preceding.” the following: “Payments for digital pho-

1 norecord deliveries shall be made to the copyright
2 owner or, if the notice of intention has been served
3 upon the Copyright Office, to either the copyright
4 owner or the Copyright Office.”

5 (5) by inserting in paragraph (6) after “copy-
6 right owner” the following: “or, pursuant to para-
7 graph (5) the Copyright Office,”.

8 (c) DEFINITIONS.—Section 115(d) of title 17, United
9 States Code, is amended—

10 (1) by striking the paragraph heading and in-
11 serting “DEFINITIONS.—”

12 (2) by striking “term has the following mean-
13 ing” and inserting “terms have the following mean-
14 ings”;

15 (3) by inserting after “meanings:” the fol-
16 lowing: “(1)”;

17 (4) by inserting after paragraph (1) as so des-
18 ignated the following:

19 “(2) A ‘limited digital phonorecord delivery’ is
20 a digital phonorecord delivery that uses a technology
21 that restricts the time or manner in which the trans-
22 mission recipient may render such sound recording
23 audible.”.

24 (d) ELECTRONIC FILING AND NOTICE TO COPY-
25 RIGHT OWNERS.—

1 (1) DUTIES OF REGISTER.—Not later than 120
2 days after the date of enactment of this Act, the
3 Register of Copyrights shall—

4 (A) establish procedures by which the no-
5 tice of intention may be served electronically
6 upon the Copyright Office, and by which rea-
7 sonable notice of the filing of a notice of inten-
8 tion may be given to the owner of copyright in
9 the nondramatic musical work;

10 (B) prescribe by regulation the require-
11 ments for the form, content, and manner of
12 electronic service of the notice, including notices
13 that identify one or more works of a particular
14 copyright owner and notices that identify one or
15 more works of numerous copyright owners; and

16 (C) prescribe regulations for the appoint-
17 ment of a designated agent to receive royalty
18 fees and statements of account, to distribute
19 royalty fees to the copyright owner, and to ad-
20 minister royalty fees that have been submitted
21 for unknown copyright owners.

22 (2) REGULATIONS.—The Register of Copyrights
23 may prescribe regulations whereby royalty fees are
24 paid to an escrow account at the last established
25 rate in which the terms and rates for the then-cur-

1 rent period have not been determined, including for
 2 the period prior to the date of enactment of this Act.

3 **SEC. 6. LIMITATIONS ON EXCLUSIVE RIGHTS: INCIDENTAL**
 4 **AND ARCHIVAL COPYING.**

5 (a) TITLE.—The title heading of section 117 of title
 6 17, United States Code, is amended to read as follows:

7 **“SEC. 117. LIMITATIONS ON EXCLUSIVE RIGHTS: COM-**
 8 **PUTER PROGRAMS AND DIGITAL COPIES.”;**

9 (b) DIGITAL COPIES.—Section 117 of title 17, United
 10 States Code, is amended—

11 (1) by redesignating subsection (d) as sub-
 12 section (f), and

13 (2) by inserting after subsection (c) the fol-
 14 lowing:

15 “(d) Notwithstanding the provisions of section 106,
 16 it is not an infringement to make or to authorize the mak-
 17 ing of a copy or phonorecord of a sound recording or a
 18 work included in a sound recording, in a digital format,
 19 provided that such copy or phonorecord is created by and
 20 is incidental to the operation of a device in the ordinary
 21 course of the use of a work otherwise lawful under this
 22 title.

23 “(e) Notwithstanding the provisions of section 106,
 24 it is not an infringement for the owner of a phonorecord
 25 lawfully acquired by digital phonorecord delivery, or a copy

1 lawfully acquired by digital transmission of a literary work
 2 embodied in that phonorecord, to make or authorize the
 3 making of another phonorecord or copy of such works, if
 4 such new phonorecord or copy is for archival purposes only
 5 and that all archival phonorecord or copies are destroyed
 6 in the event that continued possession of the phonorecord
 7 or copy should cease to be rightful.”.

8 **SEC. 7. EVALUATION OF IMPACT OF CERTAIN STATUTORY**
 9 **PERFORMANCE LICENSE CRITERIA ON PRO-**
 10 **GRAMMING SERVICES.**

11 (a) EVALUATION BY THE REGISTER OF COPY-
 12 RIGHTS.—The Register of Copyrights, in consultation with
 13 the Assistant Secretary of the Office of Technology Policy
 14 of the Department of Commerce, shall evaluate the effects,
 15 under the statutory sound recording performance license
 16 set forth in section 114(d)(2) of title 17, United States
 17 Code, upon preexisting and emerging noninteractive dig-
 18 ital audio transmission services of the criteria set forth
 19 in sections 114(d)(2)(B) and 114(d)(2)(C)(i) and (ii) of
 20 such title, with respect to—

- 21 (1) the economic costs of compliance with the
- 22 criteria;
- 23 (2) the effect of compliance with the criteria
- 24 upon the nature of the programming and the mar-
- 25 ketability of such services;

1 (3) whether any noninteractive digital audio
2 transmission service would be unable to comply with
3 the criteria and, therefore, to qualify for the statu-
4 tory license;

5 (4) whether any changes to the criteria, includ-
6 ing the elimination thereof, would enable additional
7 noninteractive digital audio transmission services to
8 qualify for the statutory license; and

9 (5) the likely impact upon copyright owners of
10 sound recordings of any such changes to the criteria.

11 (b) REPORT TO CONGRESS.—The Register of Copy-
12 rights shall, not later than 12 months after the date of
13 enactment of this Act, submit to the Congress a report
14 on the evaluation conducted under subsection (a), includ-
15 ing any legislative recommendations the Register may
16 have.

○